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DEPARTMENT FOR G/TIP JENNIFER DONNELLY, EUR/SE ELISE
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SUBJECT: TIP IN TURKEY: PARLIAMENT PASSES KEY AMENDMENTS

¶1. (SBU) Summary: The Turkish parliament passed amendments to two key articles in the Turkish Penal Code (TPC) December 5 that will improve anti-trafficking efforts in Turkey once implemented. Lawmakers added forced prostitution to Article 80, the primary anti-trafficking article, and removed forced prostitution from Article 227, the prostitution and pimping article. Up to now, prosecutors had tended to use the less stringent Article 227 to try cases against traffickers as a majority of trafficking crimes in Turkey involve forced prostitution. With the amendments, lawmakers have ensured that traffickers will be tried under the appropriate, tougher provision, Article 80. Now, victims will be assured of automatic protection, legal counseling and health care. Traffickers will be subject to stricter sentencing requirements of eight to twelve years. Statistics on prosecution of TIP-related crimes will be more reflective of the real story as most TIP crimes are tracked under Article 80 prosecutions. End Summary

Article 227 vs. Article 80

¶2. (SBU) In October 2004, the Turkish parliament passed Article 80, a new article in the TPC, to consolidate prior anti-trafficking in persons (TIP) provisions and to provide for increased penalties for traffickers. In June 2005, the parliament completed its revision to the TPC, when Article 80 replaced old trafficking-related articles such as Article ¶201. Article 80, however, did not at the time contain a specific reference to forced prostitution, which was specifically addressed in Article 227 on prostitution and pimping. Because Article 80 lacked that specific reference, prosecutors tended to use the less-stringent Article 227 to prosecute traffickers of women for prostitution, in order to ensure a solid case.

¶3. (U) In an effort to eliminate the confusion, the parliament in December amended Article 227 to remove any reference to forced prostitution and amended Article 80 to add the new phrase "made them be involved in prostitution" into the following paragraph (informal Embassy translation):

A person who procures or kidnaps persons or who takes or transports persons from one place to another or who harbors persons with a view to force them to work or to provide a service, made them be involved in prostitution or to subject them to slavery or similar practices or donate their organs by exerting threats, pressure, force or violence, by abusing his authority, by deceit or by obtaining their consent through taking advantage of the opportunities they have to control them or of their helplessness shall be sentenced to imprisonment for a term of eight to twelve years and to an

judicial fine of up to ten thousand days. (Note: Days refers to per day minimum wage equivalent. End note)

Trabzon Prosecutor Provides
Illustrative Example of the Problem

¶4. (SBU) When we met with him in September, Trabzon Chief Public Prosecutor Riza Can explained the need to eliminate the confusion but doubted that parliament would make this a priority. He told us then that all of the cases his office brought under Article 80 have been rejected by the high crimes court in Trabzon and returned to the prosecutor. Can said the approximately 10 open cases were related to sex trafficking and the higher court rejected them because prostitution was not explicitly mentioned in Article 80, while forced prostitution was outlined in Article 227. Can said he would still follow the evidence and bring cases under Article 80 as warranted. If prosecutors are forced to use Article 227, he noted, prosecutors can and do combine several other TPC articles with Article 227 to subject traffickers to increased punishment. For example, Can said, forced prostitution with an organized crime element can bring double the punishment under Article 227; a separate Article 250 can be used as well. His point was that while the evidence warrants prosecuting under Article 80, cases brought under Article 227 and others could and did still subject traffickers to a similarly high level of potential penalty and sentencing.

¶5. (SBU) Can said he was concerned about how Article 80 was being applied. He was skeptical (in September) that the parliament would consider amending the law and expected the issue would be resolved instead through case law. At the time, many other prosecutors, Ministry of Justice and police

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officials and political party and NGO contacts echoed Can's opinion.

Change Will Improve Anti-trafficking Efforts

¶6. (SBU) The anti-trafficking National Task Force, particularly the MFA, Turkish National Police and Jandarma, led efforts to lobby parliament to pass the amendments. The International Organization for Migration (IOM) and the Embassy also encouraged the changes. President Sezer must still sign the bill, which also includes several provisions on EU-related reform. MFA contacts tell us that even though some reform elements of the bill may be vetoed by the President, they do not expect he will veto the amendments made to TPC Articles 80 and 227.

¶7. (SBU) The amendments advance anti-trafficking efforts in the following areas:

-- Under Article 80, victims have increased protection rights under the Supplementary Protocol and domestic law. These rights include automatic protection and access to legal counseling and health care. While victims were often provided such rights before using other law provisions, this change will make it automatic and help ensure uniform application of these rights country-wide.

-- Traffickers will be subject to sentences of eight to twelve years. Article 227 contained lower sentencing provisions. Even though prosecutors often used several different articles to prosecute traffickers in addition to Article 227 that increased the possible sentence, prosecutors told us proving all elements was more difficult than if they were able to prosecute under a single, comprehensive article.

-- The GOT will be able to gain a more accurate picture of

investigations, prosecutions and sentencing against traffickers because most TIP crimes are tracked under Article 80 and not Article 227.

Comment

18. (SBU) Although anti-trafficking advocates recognized the Article 227 versus 80 problem immediately after the TPC was finalized in June 2005, Embassy contacts were skeptical that parliament would pass the needed amendments so soon after the TPC was completely overhauled. Most expected that jurisprudence via High Court of Appeal (Yargitay) case laws would have to solve the problem, which would have taken years. The success of the National Task Force's lobbying effort, therefore, came as a welcome surprise. While the effort demonstrates the GOT's seriousness in combating trafficking, implementation will be the barometer by which to measure real progress.

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WILSON